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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 KEWAZINGA CORP.,

4 Plaintiff,

5 v.

20 Civ. 1106 (LGS)

6 GOOGLE LLC,

Remote Oral Argument

7 Defendants.
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9 New York, N.Y.
10 February 16, 2021
10:40 a.m.

11 Before:

12 HON. LORNA G. SCHOFIELD,

13 District Judge

14 APPEARANCES

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22 Also Present:

23 Jim Sherwood, Google representative

Michael Skrzypek, defense trial tech

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1 THE COURT: Good morning.

2 MR. MODI: Good morning, your Honor.

3 MR. DiBERNARDO: Good morning, your Honor.

4 THE DEPUTY CLERK: Good morning. We're here in 20
5 Civ. 1106, Kewazinga v. Google LLC. The parties' appearances
6 have been noted for the record.

7 Before we begin, I'd like to remind the parties and
8 anyone else listening that recording or rebroadcasting of this
9 is prohibited. Violation of this prohibition may result in
10 sanctions.

11 We're here before the Honorable Lorna G. Schofield.

12 THE COURT: So welcome, everybody. It's strange to be
13 here in this remote way, but I trust we can proceed and we
14 won't have anything funny or strange. I'm glad we can start a
15 little bit later. I noticed that at least some people were in
16 California.

17 So I guess have you all talked to Mr. Street about how
18 much time you want to reserve?

19 MR. MODI: Your Honor, I believe what the parties have
20 discussed that each side would present for an hour. Certainly,
21 with the Court's permission, perhaps the parties could reserve
22 some period of time for rebuttal, although I don't think
23 counsel discussed specifically what amount of time.

24 THE COURT: As I understood it, Mr. DiBernardo was
25 going to go first. Is that right? I guess my question is do

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1 you want to reserve some time? Do you want Mr. Street to
2 prompt you or you just watch the clock? How do you want to
3 proceed?

4 MR. DiBERNARDO: Appreciate that, your Honor. I think
5 we can watch the clock on our end, if that's OK.

6 THE COURT: All right. So Mr. Street will keep track
7 as well, and you may begin.

8 MR. DiBERNARDO: Thank you, your Honor. I will
9 apologize for the mask. We're actually in a conference room
10 with colleagues. If you're having difficulty hearing me,
11 please say so, and we may rearrange and I'll try to remove the
12 mask.

13 THE COURT: OK. I can hear you fine. I obviously
14 can't read your lips, but we'll see how it goes.

15 MR. DiBERNARDO: Thank you.

16 With that, your Honor, I will share my screen to walk
17 through the presentation.

18 THE COURT: OK.

19 MR. DiBERNARDO: Are you able to see that, your Honor?

20 THE COURT: I can see it, yes.

21 MR. DiBERNARDO: We'll begin today, your Honor, with
22 the array of cameras limitation, as an overview why should the
23 Court adopt Kewazinga's proposed constructions? On the
24 Kewazinga side, the proposed constructions are supported by the
25 intrinsic evidence, supported by competent expert testimony,

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1 and absolutely consistent with the *Microsoft* Court's rationale.

2 Google responds with mischaracterizations of the
3 patents and the intrinsic record with no expert testimony, and
4 in fact mischaracterizes Kewazinga's expert Dr. Lubin's
5 credentials and mischaracterizes the *Microsoft* Court's
6 rationale.

7 Just first a word on the law that's applicable here.
8 As a baseline, courts give the terms their ordinary and
9 customary meaning in the particular field. That is the
10 baseline, an objective baseline. Patentees are free and should
11 get the full scope of the proposed term's ordinary meaning
12 unless one of two things: (1) The patentee explicitly
13 redefines the term or (2) disavows the full scope. Neither of
14 which is the case here with the terms at issue. In fact, mere
15 criticism of a particular embodiment or an alternative is not a
16 disavowal or an explicit redefinition of a term, and any
17 disavowal has to be clear and unmistakable. And, again, there
18 is none here.

19 Also important to note, your Honor, claims are not
20 limited to described embodiments. The federal circuit has
21 repeatedly cautioned against that. The specification need not
22 describe every embodiment, and claims should not be confined to
23 disclosed embodiments even when there's only a single
24 embodiment that's disclosed.

25 THE COURT: I had a question about that. In

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1 construing array of cameras, Judge Woods relied on the various
2 embodiments in the patent and noted that they all consistently
3 depicted multiple cameras in fixed locations relative to each
4 other, and that seemed to be very much at the center of his
5 analysis. And I'm genuinely asking for clarification here.
6 It's not a Socratic question. But there seems to be some
7 tension between, on the one hand, saying the claims must be
8 read in light of the specifications, but on the other hand, the
9 claims are not to be limited by an embodiment or features shown
10 in an embodiment absent the patentee's clear intention. Could
11 you speak to that.

12 MR. DiBERNARDO: Yes, your Honor. The tension, if one
13 exists, is resolved I think in this case by the nature of the
14 disclosure in the Kewazinga patents where, in the context of
15 the array, it is given a broad description. Throughout the
16 specification, it is emphasized that there's a breadth to what
17 constitutes an array, and that emphasizes that no one
18 embodiment should be limiting to the term.

19 Again, starting with the ordinary meaning, there has
20 to be either a redefinition of the term or a clear disavowal.
21 Neither of which is present here. And, again, the whole spec
22 in discussing the array emphasizes the breadth of the
23 disclosure and the flexibility and the different forms that the
24 array can take. And I will get into those disclosures in the
25 presentation, your Honor.

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1 THE COURT: OK.

2 MR. DiBERNARDO: So just some background on the
3 asserted patents. They're directed to not a specific array,
4 not any particular structure. They're directed to telepresence
5 systems and methods that enable multiple users to smoothly
6 navigate imagery along a path through a remote environment
7 simultaneously and independently of one another. In the
8 disclosed environment, there are at least three aspects that
9 allow this to happen: image capture, storage, and user
10 navigation. I'll briefly go through that by way of background
11 and go into some of the specifications as I mentioned.

12 Let's start with the image capture and storage, your
13 Honor. At the top of the picture, and this is Figure 1 which
14 is in all of the patents, array 10 shown in red is comprised of
15 multiple sub-arrays, as Dr. Lubin calls them, rail arrays 12,
16 and each rail array includes multiple cameras 14. The images
17 are captured and sent via local area hubs shown in blue to the
18 server, and the server causes the images to be stored in an
19 electronic storage device shown in purple. So the function
20 here is the array is there to capture the images so that they
21 can be stored for later retrieval and navigation. I will say
22 the implication of the local area hubs and why we included them
23 there is that the arrays, the cameras, the rail arrays, don't
24 have to be connected to one another. They can be wire --

25 THE COURT: What do you mean?

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1 MR. DiBERNARDO: They can comprise -- the array of
2 cameras 10 can comprise discrete sections, each section of
3 which is fed into a local area hub for the images to be stored.
4 The camera array 10 does not have to be a unitary structure.

5 THE COURT: OK.

6 MR. DiBERNARDO: That's generally the image capture
7 and storage.

8 Now, on the user navigation side, having stored the
9 imagery in the electronic storage device, users using a various
10 type of computing device can send navigation commands, user
11 inputs, to the server, and based on those user inputs, the
12 server in turn provides the imagery from those storage nodes to
13 the user. And in providing those, that imagery, the server
14 and/or the user interface devices can process the imagery, for
15 example, to smooth the navigation.

16 A bit more on the navigation, your Honor. Navigation
17 here is not physical, it's in a sense virtual. It's as the
18 patents describe, floating between a multiplicity of camera
19 outputs, through electronic switches. That's movement through
20 the array. It's selecting which images from storage are to be
21 retrieved and viewed.

22 THE COURT: Just so we're clear -- and I heard you
23 just now say it -- what we're talking about are captured images
24 or stored images, not live camera images?

25 MR. DiBERNARDO: Relevant here, although the patents

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1 describe alternate embodiments where it could be live, here
2 we're talking, yes, primarily about the stored imagery.

3 THE COURT: OK.

4 MR. DiBERNARDO: So that's the navigation of the
5 patents. It is not providing a user with remote control to
6 physically move a robotic camera. It's not giving a user that
7 remote control. And the patents discuss that and say if you
8 were to do that, that immediately limits the number of viewers
9 that could simultaneously control their own course. Only one
10 person is controlling that robotic camera. That's not the
11 invention. That's the type of moving, physically moving of
12 cameras, that was criticized in the patents.

13 Another note on the navigation. Navigation also is
14 not based on knowing the precise location of the cameras, where
15 the images were taken, but based on relative ordering of where
16 the images were to -- and that's emphasized in Figure 5, which
17 again is in each of the patents, although we cite only to the
18 '325 patent here, your Honor. You can see users can choose to
19 move, for example, to the right in the environment. In which
20 case, in response to receiving that input, the server, the
21 system, would increment the camera node along the x-axis. So
22 moving from the first camera, say, X0, receiving an input to
23 move to the right, moving to X1, the next camera. There's no
24 requirement that the user or the system know the precise
25 location of the cameras. It's that relative ordering, moving

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1 to the right, increment the address along the X axis; moving to
2 the left, decrement the node address. So that is navigation.

3 Now, with that background, why should the Court adopt
4 Kewazinga's construction? Again, it's consistent with the
5 intrinsic evidence, it's supported by expert testimony, and
6 it's consistent with the *Microsoft* Court's ruling. Google's
7 proposed construction has ambiguities that were not addressed
8 in the *Microsoft* case or in the Court's opinion, and those
9 ambiguities are actually highlighted by Google's attempts to
10 read in narrowing limitations that are not required by that
11 specific language. We'll get into that.

12 So, again, array of cameras, they're there to capture
13 the images that are stored for the purposes of navigation.
14 What do we know about the array? It has full breadth. It can
15 take many different forms to achieve that purpose. It's not
16 limited to a specific structure or a single structure. The
17 array of cameras is not limited to fixed or stationary cameras.
18 Cameras can be moved. An array of cameras can comprise
19 multiple other array of cameras.

20 THE COURT: So let's talk about that a little bit
21 because Judge Woods -- and I should just tell you. I'm not
22 necessarily wedded to what he has concluded -- but Judge Woods'
23 conclusion and Google's position is that the cameras are fixed
24 relative to each other. The array isn't fixed, but that the
25 cameras relative to each other are fixed. I guess it wasn't

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1 entirely clear to me that you really disputed that.

2 MR. DiBERNARDO: Kewazinga's proposed construction
3 that the camera configuration can be created over time by
4 moving cameras is consistent with that. Kewazinga's not
5 putting forth a proposed construction where the images and the
6 positions are not fixed. We do believe there are serious
7 ambiguities with that language. Again, that was language that
8 the *Microsoft* Court adopted without it being proposed by either
9 party.

10 THE COURT: I understand that. I guess what I'm
11 trying to understand is what your position is relative to that
12 because I just heard you say that it wasn't necessarily
13 inconsistent. So I think what you're saying, but correct me if
14 I'm wrong, I think you're saying that the cameras are situated
15 in a way that is fixed relative to the other cameras, and
16 therefore the images are fixed in a particular configuration,
17 but you're suggesting that you can move the cameras. For
18 example, if you only have two cameras, you can use the camera
19 in -- one camera in position one and position two and then take
20 that first camera and move it to position three but maintaining
21 a configuration that will allow you to have overlapping images
22 so it seems as though you are walking through the environment
23 or moving through the environment.

24 MR. DiBERNARDO: Your Honor, we largely agree with
25 that, that, yes, Figure 11 and 12, that embodiment really

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1 highlights this, that cameras can be moved to capture the
2 images and perform the array. And once the images are captured
3 and the array is formed, those relationships between the
4 captured images do not change. There is a known relationship.

5 Much of the issue, as is clear in our papers, is what
6 ambiguities and other limitations Google has attempted to read
7 into that notion of a known relationship. For example, they're
8 quite clear that they read into that limitation that there has
9 to be a predetermined relationship. There's no requirement for
10 a precise relationship or predetermined relationship. That
11 again is supported by Figure 11, which we can get into, where
12 cameras can be situated basically in real time. The creator of
13 the system can decide after cameras are placed whether or not
14 to add more without having it predetermined.

15 THE COURT: So here's a question for that, and that
16 is, I go back to the idea of just in plain English what's an
17 array? It's not that common a word, but the way it comes up
18 commonly that I think is similar here is we talk about an array
19 of solar panels. What we mean when we talk about an array in
20 that sense, I think, just means a collection of things that are
21 organized in some way together.

22 So if your array just means that you have a collection
23 of things, why isn't it so that you need to know where the
24 various things are in order to capture your images in the way
25 that's contemplated by the patents?

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1 MR. DiBERNARDO: First, your Honor, in some claims
2 there is other language that adds context for the array, but as
3 we note from the *Phillips* case, and consistent with what the
4 *Microsoft* Court did, that other language in the claim is not
5 read into the term. If it exists, it exists.

6 THE COURT: Right.

7 MR. DiBERNARDO: So one claim, for example, refers to
8 progressively different locations, but that is separate
9 language, not to be read into the definition of array.

10 THE COURT: Right. OK. I'm sorry. I understand that
11 is your answer, so you can go ahead.

12 MR. DiBERNARDO: OK. Just one more point, your Honor,
13 to emphasize. Once the images are captured, then the relative
14 relationship between the images is known. It's a question of
15 not having to have it predetermined or to have a precise
16 location.

17 THE COURT: But here's a question. Why do we care
18 about that question? Because that doesn't seem to me, this
19 idea of predetermined, to be inherent in either your definition
20 or in Google's definition. So why do we care?

21 MR. DiBERNARDO: That really is in large part the
22 argument because it's "fixed in relation." Because it raises
23 ambiguities like "fixed" confusing the jury. Does it mean the
24 cameras are stationary? Are the arrays stationary?

25 THE COURT: It says "fixed in relation to each other,"

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1 and that doesn't seem -- and Judge Woods' opinion makes clear
2 that he is rejecting the idea that they are physically fixed in
3 some location, and I think the words that Google's suggesting
4 don't in this case suggest that they're fixed in one location,
5 just that the cameras are fixed in relation to each other and
6 also that, therefore, the images that come from those cameras
7 are fixed in relation to each other.

8 MR. DiBERNARDO: The issue, your Honor, is highlighted
9 by Google's explicit attempt to read in this notion of
10 predetermined into those words. That is certainly an issue
11 that we take. Those words, "fixed in relation," do not require
12 predetermined relationship, yet --

13 THE COURT: Right. I mean, in theory I could adopt
14 their definition and reject the idea that it's predetermined.

15 MR. DiBERNARDO: Yes. I think there are perhaps
16 better phraseologies that wouldn't raise potential ambiguities
17 like known relationship and the fact that that known
18 relationship between the images occurs after the images are
19 captured, so that's not predetermined.

20 But, yes, as I said at the outset, Kewazinga's
21 proposed construction is not inconsistent; it's absolutely
22 consistent with *Microsoft's* rationale regarding "fixed in
23 relation." The Court's rationale there was that once an array
24 is formed, the cameras are fixed in relation. That moving a
25 camera would change the geometric relationship of cameras

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1 within that array and form a new array. In other words --

2 THE COURT: Let me just interrupt you. I know that
3 that's what it says, and actually that doesn't make that much
4 sense to me, and maybe Google will want to address that. But I
5 don't necessarily accept that conclusion.

6 MR. DiBERNARDO: Perhaps we should take a look at that
7 language in more detail, if I may. I do have slides on that,
8 your Honor.

9 THE COURT: Sure. I guess slides are great until you
10 start having a discussion, but anyway, go ahead.

11 MR. DiBERNARDO: Actually --

12 THE COURT: So I understand your position. Your
13 position is Figure 11, you have these concentric circles. You
14 call it an array and sub-arrays. "Sub-arrays" isn't included
15 in the patent. Judge Woods says anytime you are moving to
16 another circle, it's a different array. I don't get hung up on
17 whether it's a different array or not. Perhaps I should since
18 we're defining the term "array," but anyway, go ahead.

19 MR. DiBERNARDO: So if I could start with Figure 11 to
20 make sure we're on the same page because Figure 11 and
21 Figure 12, that embodiment, provides the context.

22 THE COURT: So this is not Figure 11?

23 MR. DiBERNARDO: No, it's not. Apologize, your Honor.

24 THE COURT: There it is.

25 MR. DiBERNARDO: Figure 11. Figure 11, it refers back

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1 to Figure 1 which is in all the patents. Let's just talk
2 quickly about the components.

3 Again, you have the array of cameras 10, the overall
4 array. In Figure 1, that comprises multiple rail arrays, each
5 of which carries cameras 14. In Figure 11 the nomenclature is
6 the same. Array of cameras 10 is a collection of cylindrical
7 arrays -- again, it's a top-down view here -- a collection of
8 cylindrical arrays 12, 12-1, 12-2, 12-3, and so on, each of
9 which carries cameras. Here, the array of cameras 10 does
10 include multiple other arrays, rail arrays in Figure 1 and the
11 cylinders 12 in Figure 11. That's the reference to sub-arrays.
12 It's just a way of explaining it, certainly not a convoluted
13 theory the way Google characterizes it. It's explicit in each
14 of these embodiments.

15 So Figure 11, what's shown here? Figure 11 is a
16 time-lapse view. These different cylinders we're seeing, they
17 don't all exist at the same point in time, and that's made
18 clear in the discussion in patents, including Figure 12.

19 How does it operate? First, the first cylinder, 12-1,
20 is put into place, images are captured, and then that cylinder
21 is removed and the creator decides, does she want another
22 cylinder? So 12-1, that cylinder is removed, 12-2 is put in
23 place, images are captured, and then 12-2 can be removed and a
24 new cylinder, 12-3, can be put into place. These cylinders,
25 the collection, that's array 10. Notably, by removing cylinder

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1 12-1 and cylinder 12-2 and putting in cylinder 12-3, putting in
2 cylinder 12-3 does not change the relationship between the
3 cameras and the output that had already been captured by the
4 earlier cylinders 12-1 and 12-2. Cameras can move without
5 changing the relationship among the images. So, again, it's
6 the collection of all of those cylinders, those sub-arrays,
7 12-1 through 12-n, that comprise the array of cameras 10.

8 So what do we know from this? Cameras can be moved
9 into position to capture the images at different locations in
10 different times. Cameras in the array don't need to be
11 physically connected. Each of those cylinders are not
12 physically connected. They are comprised -- the camera array
13 is comprised by multiple sub-arrays. Not all of the cameras in
14 the array need to be positioned at the same time. The
15 locations of cameras in the array do not need to be known prior
16 to capture. Again, the creator is making that determination as
17 to whether or not to put new cylinders in place and capture
18 additional images at the time, after each cylinder is placed.
19 That's step 1250 in Figure 12 and described in the '325 patent,
20 on 19, line 58, I believe.

21 Again, there is no requirement that there be exact or
22 uniform distances. Notably, again, the relationships between
23 the cameras in the earlier part of the array are not changed by
24 moving cameras to form the later part array, to capture the
25 images at the later part.

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1 The Figure 11 and 12 embodiment clearly show that an
2 array of cameras can be created over time by moving cameras.
3 And I will say Google misrepresents the patents in this regard.
4 They criticize --

5 THE COURT: Misrepresents what? I'm sorry. I missed
6 a word.

7 MR. DiBERNARDO: The patents, your Honor.

8 THE COURT: OK.

9 MR. DiBERNARDO: They criticize Dr. Lubin unfairly,
10 and they mischaracterize the Court's order, all to disparage
11 Figure 11. Why? Because Figure 11 is remarkably similar to
12 the accused products here. In Google Street View, they have
13 multiple cameras mounted atop a car that captures images at
14 discrete locations along a street. First location images are
15 captured and stored, a second location images are captured and
16 stored, and third location, and so on. Those different
17 locations are sub-arrays, just as in Figure 11, and the
18 collection is an array of cameras formed over time. Also, just
19 as in Figure 11, a user can navigate around a given ring and
20 those images can be processed, so too can a user navigate
21 around images at a given location in Street View --

22 THE COURT: So could I ask a question? So why is it
23 so important to you to characterize these as all part of the
24 same array? Why does it matter whether we think of everything
25 in red as a single array or whether we view each circle as an

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1 array?

2 MR. DiBERNARDO: To the extent some claims refer to
3 progressively different locations, these different locations
4 along the street are those progressively different locations
5 through the environment. So that is one reason.

6 THE COURT: OK.

7 MR. DiBERNARDO: Again, this collection of images are
8 all that are provided to the user to be navigated. And again,
9 users can not only navigate around a cylinder in Figure 11 and
10 around a ring at a given location in Street View, but users can
11 navigate from one ring in Figure 11 to another ring, and that
12 navigation can include processing to smooth the transition.
13 Just as in Google Street View, users can navigate from one
14 location to another and have processing to smooth that. The
15 two are very, very similar.

16 So what's Google's explanation? Actually, your Honor,
17 if I may, since you asked the question, I'm going to jump ahead
18 to the Court's discussion on this.

19 So what does it mean to move a camera and change the
20 geometric relationship? That's what the Court was focused on.
21 The cameras in an array having fixed fields of view, that's
22 what's saved, stored, that's what's navigated. If you move a
23 camera, for example here, camera X3, it creates a different
24 path. It changes the geometric relationship between them, and
25 Judge Woods believed that created a new array. That discussion

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1 does not go to whether array of cameras 10 in Figure 11
2 encompasses the multiple cylinders. It is a very different
3 issue, and Google mischaracterizations that. So let's look at
4 what the Court said.

5 The *Microsoft* Court says that the cameras are deployed
6 to create the necessary fields of view. Those fields of view,
7 as we discussed, that's what's navigated. The images are saved
8 and available for navigation. It's not about moving cameras to
9 navigate, it's about navigating those stored images.
10 Accordingly, a POSITA would understand that cameras that did
11 not have fixed fields of view relative to the other cameras in
12 the array would be contrary to the teachings. Again,
13 navigation, your Honor, is not is changing view of camera, like
14 remote control; it's not providing a user remote control of a
15 moving camera. That's what Judge Woods was referring to here.
16 Cameras within an array have the fixed field of view. Those
17 are the paths that can be navigated.

18 However, moving cameras -- we'll continue. Moving
19 cameras within an existing array, and that's the key part,
20 within an existing array like the prior figure, that would
21 change the geometric relationship between cameras in that
22 array, resulting in a new array. That does not go to the
23 question of whether you can move cameras to form the array.
24 That's clearly supported by Figure 11. That is not what Judge
25 Woods is talking about here. And again, in Figure 11 cameras

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1 are moving to create the array, and once the images are
2 created, the relationship between them is absolutely fixed.
3 There is a known relative relationship between those images.
4 Again, creating the navigation path and creating the array is
5 different from changing the navigation. That's what Judge
6 Woods was getting at.

7 Another section of Judge Woods' decision, and here
8 he's talking about each array, each cylinder, 12-1, 12-2.
9 Microsoft is not addressing whether the array of cameras 10 in
10 Figure 11 can be created over time. He's looking at individual
11 cylinder arrays. Notably, the text highlighted in blue, your
12 Honor, was admitted by Google in their brief. They quote the
13 yellow section but not the blue, and the blue section really
14 highlights what the Court was getting at. The issue that the
15 Court was getting at here was whether, even if the same cameras
16 were reused from array 12-1 to 12-2, would that be a different
17 array? That's what the Court was getting at. That provides
18 the context. And the Court said, well, the geometric
19 relationship between the cameras in 12-1 and camera 12-2 are
20 different, so a POSITA would understand them to be different
21 arrays even if the same cameras were repurchased. That does
22 not go to whether or not the collection of cylinder arrays in
23 Figure 11 comprised the overall array of cameras 10. If you
24 look at the footnote that Google omitted in their quotation,
25 the judge acknowledges this. The one statement in this

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1 section that really goes to Figure 11: A POSITA would not
2 understand that an array of cameras must comprise a single
3 structure. Absolutely not, it can comprise multiple
4 structures. Array of cameras 10 can comprise cylinder arrays
5 12-1 through 12-n.

6 One other point of mischaracterization here. Again,
7 Google misrepresents the language in the asserted patents
8 regarding moving vehicles. Google says the patents criticize
9 creating an array over time. Absolutely not. The patents
10 criticized giving users remote control over moving vehicles,
11 not creating an array over time, and the PTAB in rejecting a
12 challenge, Microsoft's IPR to the patent, absolutely agreed.
13 The 2006 application, which includes the language quoted here
14 from the '325 patent, criticized moving cameras for requiring
15 viewer control of the camera system's movement for navigation,
16 remote control, that's what was criticized. There was not a
17 broad exclusion of moving cameras, certainly not creating
18 cameras over time. Again, we know from the law that
19 construction that reads out an embodiment is rarely, if ever,
20 correct. The criticism was much more limited, your Honor.

21 With that, your Honor, I think I will reserve time for
22 rebuttal on the array issue.

23 THE COURT: OK.

24 MR. MODI: Thank you, your Honor. First of all, let
25 me thank you, your Honor, for setting the hearing at 10:30. I

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1 am one of those folks that are out in California, so I
2 appreciate the extra half-hour. So thank you.

3 Your Honor, here's the fundamental dispute. I'll just
4 tee it up, and then I do have a slide presentation as well that
5 will walk through this. There is not a single description in
6 these patents about creating an array over time with moving
7 cameras. That's an additional concept that Kewazinga is trying
8 to get with its construction. It's not within the ordinary
9 meaning of array. And as we'll see from the evidence, an
10 array -- what they were really going for is a set of cameras
11 that are situated in an environment, in a precise arrangement,
12 and then which are used to capture images and that can be
13 navigated through. Figure 11 does not describe a single array
14 that is created over time. That's what Judge Woods found and
15 that's what the text of the patents say.

16 So I'll go through that in great detail because every
17 one of the arguments that Kewazinga's counsel just raised, they
18 made the exact same arguments to Judge Woods, and I'll walk
19 through every single instance of that. But that's the bottom
20 line, there is no disclosure, and the claims don't contemplate
21 or cover this concept of an array that is created over time by
22 moving cameras.

23 With that --

24 THE COURT: So can I just ask this question: So what
25 you're saying, then, is that the dispute in the construction is

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1 whether the array can be created over time, and therefore in
2 construing the term, that disputed meaning has to be addressed?
3 Is that why we're talking about this? Because it's not --
4 you're right in the sense that there's nothing in the patents
5 that really talk about that. On the other hand, there's
6 nothing in the patents that necessarily precludes it, I think.
7 But why do we have to resolve that now? Is that the point of
8 claim construction, because that's the issue you're disputing?

9 MR. MODI: That is part of it, yes, your Honor.

10 THE COURT: OK.

11 MR. MODI: To resolve this notion that Kewazinga
12 argues that it is being consistent with the Microsoft Court's
13 construction. Well, if it was being consistent with the
14 *Microsoft* Court's construction, of course, it would propose the
15 *Microsoft* Court's construction. It has completely changed the
16 words of the *Microsoft* Court's construction and, as we'll see,
17 in a way that's meant to capture exactly the concepts and the
18 argument that the *Microsoft* Court rejected.

19 So, Mr. Skrzypek, can we go to slide 2, please.

20 As your Honor is aware, there are two claim terms at
21 issue here, and just on the second slide, for the Court's
22 reference later on, we've indicated which slides are for which
23 terms.

24 Next slide, please.

25 Your Honor touched a little bit on this in some of the

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1 questioning. There is a little bit of a tension in the federal
2 circuit case law on what we're supposed to do with claim
3 construction. The plaintiffs' counsel recited some cases about
4 how there's got to be a clear disavowal. That was the *Thorner*
5 case in 2012. The federal circuit's been doing claim
6 construction for I think almost 25 or 30 years, so you can find
7 cases that say pretty much anything. But I think the common
8 thread between them, the thrust of them, is we look at claim
9 construction with an eye towards what the patentees actually
10 invented, and to do that you look at not just the plain
11 language you look at the specifications, you look at the
12 disclosure as a whole. Were that not the case, of course, we
13 could go to a dictionary on disputed terms and resolve the
14 dispute there, but that's not how it works. And in fact, there
15 are a couple of cases that really hammer this home, cases that
16 actually were decided after the *Thorner* case that plaintiff
17 counsel relies on. The first of which is the *UltimatePointer*
18 case which we've cited on slide 3. When a patentee goes out of
19 its way to actually denigrate or speak negatively of prior art
20 technologies, that's a pretty strong indication that they were
21 not intending to capture those criticized technologies within
22 the scope of the array claims, and we see this with array and
23 specifically this "moving over time" argument.

24 The second was cited in our papers. It's the *Eon*
25 case, 815 F.3d 1314. And really there -- again, this is a 2016

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1 case, so it's after the *Thorner* case, and what the federal
2 circuit said in *Eon* is a party's not entitled to claim
3 construction divorced from the written description in the
4 prosecution history. The only meaning that matters in claim
5 construction is the meaning in the context of the patent. And
6 it actually reversed an order where the patentee was trying to
7 get a definition of a term that maybe in the abstract made
8 sense but in light of the specification made no sense at all.

9 So this comes up in a number of the arguments, but to
10 your Honor's point, there is some tension. It is a balancing
11 act, but we've got to look at what the inventors were actually
12 trying to invent.

13 So if we go, Mr. Skrzypek, to slide 7, please.

14 Just as some additional background, Kewazinga in its
15 patents, before it actually starts to describe the invention,
16 talks about what was in the prior art, and they do so by --
17 Mr. DiBernardo -- sorry, actually, Mr. Skrzypek, can we go back
18 to slide 6, please.

19 What these patentees were trying to invent was a
20 telepresence system for music concerts, museums, you know, this
21 ability to simulate a viewer's actual presence in a venue,
22 preferably in real time. So, actually, a preferred version of
23 this invention, a preferred embodiment, is actually having
24 these cameras situated around, say, Madison Square Garden and
25 viewing a concert, for example, in real time. That's important

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1 because one of these concepts that we see Kewazinga trying to
2 bring in is this idea that an array can be formed over time.
3 Well, an array that's formed over time requires moving a camera
4 from here to here to here and necessarily cannot convey or
5 allow somebody to navigate a venue in real time, right? The
6 camera as it moves time has passed. The event is no longer the
7 same event it was.

8 THE COURT: I thought, though, that the real time was
9 something that was preferred and not essential and that Figure
10 11 does contemplate moving cameras, although it calls each
11 concentric circle an array and not a sub-array.

12 MR. MODI: Yeah, that's right, your Honor. I'm not
13 suggesting that this invention only covers live events. I'm
14 laying the context for what the inventors were trying to solve
15 and what did they have in their heads. Google, of course,
16 disputes that Figure 11 depicts this notion of creating a
17 single array over time, and we'll go into that. That's partly
18 because the patent itself talks about Figure 11 as describing
19 multiple arrays, and it's the intrinsic evidence that is the
20 most persuasive. But to your Honor's question, I'm simply
21 setting the context for what the preferred embodiment of this
22 invention is.

23 Let's go to slide 9, please -- excuse me, slide 10,
24 Mr. Skrzypek.

25 So after the patentees go through what the prior art

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1 is and what some of the downsides are -- I've got actually in
2 some of the prior slides this notion that there are downsides
3 to these systems with moving cameras or systems with 360
4 cameras -- what these inventors was going for was something
5 better, something improved. And the solution was to situate an
6 array of cameras, each of which has an associated view of the
7 environment, and in certain embodiments they're on rails.
8 They're locked in fixed relation to each other. So they're
9 situated around, again, for example, a ring, a bowl around
10 Madison Square Garden, Section 200, and from each angle you get
11 a slightly different perspective of the Knicks game or the
12 concert. And using that, using the images that are captured
13 from each of those cameras, a user can navigate through those
14 different angles. It simulates actual in-environment transit
15 as the patents say.

16 And, again, next slide, please.

17 What the patents tell us is that that is different
18 from having to move a camera around. We're going to use a
19 multiplicity of positioned cameras around the environment and
20 set the stage for the image capture. In fact, array 10 -- and
21 this is on the bottom of slide 11 -- it has several advantages.
22 Because it uses this series of cameras, no individual camera or
23 the entire array needs to be moved. It's already there. It is
24 strategically placed in the environment. It's something that
25 exists.

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1 With that, your Honor, I'll go specifically to the
2 array of cameras.

3 Mr. Skrzypek, let's go to slide 15 and 16, please.

4 And on slide 15 we have the -- how the claim terms
5 were cited. Array of cameras appears in the '226 patent and
6 the '325 patent. The '226 -- this will come up a little later,
7 but the '226 was actually the first in these series of patents.
8 The application for it was filed in April of 1999, I believe,
9 and every claim in that patent has this array of cameras.
10 The '325 came six months later. The application was filed half
11 a year later, and it was there the first time where this Figure
12 11 embodiment was actually included. So array of cameras is a
13 concept that the patentees had in their minds and actually
14 claimed in every claim of the '226 patent without reference to
15 Figure 11 at all. This Figure 11 embodiment doesn't even exist
16 in the '226 patent.

17 Next slide, please.

18 Google's proposed construction is the same as the
19 *Microsoft* Court's construction, a set of multiple cameras each
20 fixed in relation to each other. Kewazinga's construction,
21 while they purport to argue that it is consistent with the
22 *Microsoft* Court's construction is actually quite different from
23 it in the words, as is clear just from the words themselves.
24 But if we look at the next slide, it's worse than that. It's
25 actually a rehash of the exact construction that Kewazinga

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1 proposed in the *Microsoft* case.

2 THE COURT: Just to go back to a question that I asked
3 before, if you look simply at the words of your proposed
4 construction and Judge Woods' construction, it doesn't seem
5 necessarily inconsistent with Kewazinga's proposed
6 construction.

7 MR. MODI: I think that's why it's important to
8 understand why Kewazinga is proposing that construction and how
9 it compares to the exact arguments that they made to the
10 *Microsoft* Court because perhaps in the abstract maybe there is
11 no inconsistency, but I think what becomes very clear -- and
12 I'm about to go through this -- is each of these concepts, what
13 they're trying to build into the claim term, are concepts that
14 Judge Woods specifically rejected in coming up with the
15 construction for this term.

16 So just looking at what Kewazinga proposed in the
17 *Microsoft* case, movable cameras and re-using a camera in
18 multiple locations, that's how -- that is a concept that
19 Kewazinga argued in the *Microsoft* case could be included within
20 an array. Now, in this case they argue, well, what if we move
21 cameras over time? We made this point in the papers. Having a
22 camera and then moving it to reuse it at a slightly different
23 location is the same thing as what they're trying to argue now.
24 What they're saying, the movement from point A to point B, if
25 you look at it as a whole, is creating the array. It's the

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1 same concept. They're using slightly different words, but it's
2 the exact same concept that they're trying recapture, concepts
3 that Judge Woods rejected in the *Microsoft* case.

4 So what I'd like to do first is go through why Judge
5 Woods got it right, why this construction makes sense.

6 If we could go to slide 18, please, Mr. Skrzypek.

7 There's, I guess, two clauses to the *Microsoft* Court
8 construction. The first is a set of multiple cameras, and I'll
9 focus on that first, and then I'll talk about "each fixed in
10 relation to each other." I don't think there's actually much
11 of a dispute as to the first clause, "a set of multiple
12 cameras."

13 Next slide and the next slide after that.

14 When you think about, your Honor brought up this, what
15 is just sort of the ordinary meaning of array, an array is a
16 multiple of something. It's a grouping, and that's actually
17 from the dictionary definition, a dictionary that Kewazinga
18 cited in its papers. It's a collection or a grouping of
19 something in some sort of organized way. And, I mean, if you
20 just think about it, your Honor, I'm holding up a pen. If I've
21 got a pen on the left side of my screen -- I suppose this might
22 be right to left -- and then I move it five inches and then I
23 move it five more inches, nobody could call that an array of
24 pens. I've got one pen, right? So I don't actually think
25 there's any dispute that an array of cameras has to be a set of

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1 multiple cameras.

2 Next slide, please.

3 In fact, this is actually perfectly consistent with
4 the claim language which talks about the array including a
5 series of cameras.

6 Next slide, please.

7 This is a point that Judge Woods made in his order.
8 The specification is fully consistent with that. Every single
9 embodiment of the array of cameras that's disclosed in these
10 patents has an array with a set of multiple cameras. We're not
11 talking about one camera that goes from point A to point B to
12 point C and thinking of that as the array. It's a thing. It's
13 a structure that includes multiple cameras at a given point in
14 time, right? So that's --

15 THE COURT: So it seemed to me that what Kewazinga is
16 saying -- and maybe I have it wrong -- but it seemed to me that
17 what they were talking about was a grouping of images, but the
18 patent talks about a grouping or an array of cameras. So even
19 though what they're saying about images may be true, it's not
20 fully consistent with the patent because we're talking about
21 multiple cameras.

22 But then the next thing I wondered about is it seems
23 to me they concede we're talking about multiple cameras. So
24 what if you have two cameras and you just keep using the same
25 two but you move them? For example, in 2e if you're using --

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1 you have two cameras, and so you take your image with the first
2 one and then the second one and then you move the first one to
3 the third position and then you move the second one to the
4 fourth position, why isn't that an array of cameras?

5 MR. MODI: I think this actually goes to the next part
6 of the construction, which is "fixed in relation to each
7 other." The short answer is, your Honor, one of the things
8 that Kewazinga's trying to do here is obviate the need for any
9 sort of order or arrangement in the cameras, which is of course
10 what is required by an array as we just saw in the dictionary
11 definition. It's some kind of regular order or arrangement.
12 What they are going to argue, in fact what they're arguing now,
13 is it doesn't matter what the relationship is between the
14 cameras is when you're thinking about the array as long as you
15 can determine that relationship after the fact. So it
16 doesn't -- and if you just sort of take that argument to its
17 logical conclusion, any two cameras have some physical
18 relationship between them that you can determine after the
19 fact. I mean, you can always measure the distance of two
20 cameras where they take an image after they've already taken
21 the image. Abstracting it out even further, two cameras exist
22 on the planet earth, and therefore you can determine *post hoc*,
23 after the fact, the relationship between them. That's not at
24 all what these patents are about, and that's certainly not what
25 is claimed here.

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1 What's claimed here is not the idea of a collection of
2 cameras that -- for which you can determine the relationship
3 beforehand. What's important here and that's claimed here is
4 an arrangement of cameras that is organized and situated in a
5 particular way at a given time where you know the relationship
6 between one another predetermined and then from there you
7 capture the images and navigate to them, and --

8 THE COURT: Where does it say that?

9 MR. MODI: I'll go right to that, your Honor. Let's
10 see. Let me actually -- if I may, your Honor, actually, the
11 inventor said it is the first thing, and I'll show where the
12 patent says it and I'll show where the *Microsoft* Court has made
13 the same determination.

14 I do want to -- maybe, Mr. Skrzypek, you can go to
15 slide 24, please.

16 So the argument here is Kewazinga's argument is that
17 its construction is perfectly consistent. We just didn't have
18 an opportunity to explain alleged ambiguities in "fixed in
19 relation to each other."

20 Next slide, please.

21 In fact, Mr. DiBernardo, who argued claim construction
22 in the *Microsoft* case, made the assertion whether the cameras
23 are fixed is immaterial to the invention and not required by
24 the phrase "array of cameras." So this idea of whether cameras
25 need to have a relationship to one another in the array with

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1 respect to one another was directly in front of the Court, in
2 front of the *Microsoft* Court. And this gets to your Honor's
3 question right here.

4 Next slide.

5 At the claim construction hearing in attendance was
6 David Worley. David Worley is one of the inventors of the
7 patents-in-suit, and Mr. Worley actually stood up and
8 confirmed, he said the array itself does not have to be fixed;
9 the array can be moving. And that's consistent with the
10 descriptions in the patents about how an array can be on a
11 frame with wheels and you can move the frame in place. But
12 what Mr. Worley confirmed in court was that what has to be
13 fixed are the cameras in relation to each other. So here we
14 have the inventors of these patents telling us that what you've
15 got to know, what you've got to at least --

16 THE COURT: That's not really intrinsic evidence,
17 right? I mean, that's -- I understand he's the inventor, but
18 to the extent it doesn't say that in the patent, I'm not sure
19 what weight to put on that.

20 MR. MODI: I think it's compelling evidence. It is
21 not intrinsic evidence, that is true, your Honor, other than it
22 is the testimony or at least the words in open court of an
23 inventor of the patent-in-suit who presumably knows what the
24 invention is about.

25 Let me then turn to slide 34, Mr. Skrzypek.

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1 To your Honor's question about where does it say this
2 in the patent, there are a couple of places. The '226 patent
3 at column 4, lines 12 to 18 makes clear that what the system is
4 doing is positioning cameras in place before image capture.
5 Same thing with column 6, lines 26 through 32. The array
6 doesn't need to move or cameras don't need to move in order to
7 form the array. The array is a set of cameras which are
8 strategically placed through the environment. I think this is
9 where Judge Woods, he heard the arguments of both parties, he
10 heard expert testimony from both sides, and his conclusion,
11 which we believe is correct -- if we go to slide 32,
12 Mr. Skrzypek -- if you look at every single embodiment of these
13 patents, every single one of the figures, what Judge Woods
14 concluded correctly is that all the multiple of configurations
15 contemplated in the patents, however, the cameras in each array
16 are always fixed in geometric relation to each other. Why is
17 that? The fixed geometric relationship between the cameras
18 within an array is crucial to permitting users to navigate the
19 environment captured by that array. Indeed, as the
20 specification describes and as Judge Woods explained in his
21 order, the cameras are carefully deployed to create the
22 necessary fields of view. You can't carefully deploy cameras
23 in an environment if you don't even know the relationship
24 between them in advance, right? That's the -- sort of doing it
25 ad hoc is the opposite of that. So the conclusion was,

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1 correctly, a POSITA would understand that cameras that did not
2 have fixed fields of view relative to the other cameras in the
3 array would be contrary to the teachings of the '325 and '226
4 patents.

5 THE COURT: So I alluded to this before. The thing
6 that gives me pause here is the case law that says that you
7 shouldn't use embodiments to create limitations that aren't
8 otherwise in the patent, and even if there's only one
9 embodiment, to me that suggests even though every single
10 embodiment has fixed cameras, that that doesn't necessarily
11 mean it has to be that way. So are there cases in the federal
12 circuit, for example, where the court said: Oh, yes, it has to
13 mean that because every single embodiment in the patent shows
14 that?

15 MR. MODI: There are cases like that, your Honor. I
16 believe we've cited them in the papers. I think the *Eon* case
17 that I mentioned earlier is one of those. I don't have others
18 directly on hand. I am certainly -- I believe I can find one
19 in the context of this hearing, but there are absolutely cases
20 that say if you describe your invention consistently with
21 respect to certain features, including an array embodiment, it
22 is proper, indeed, the right approach, to construe the claims
23 that way. Because, again, we don't construe the claims in a
24 vacuum, right? The idea here is to capture what the actual
25 invention was. So if every single embodiment, like in this

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1 case, if every single embodiment that is described has cameras
2 that are fixed in relation to one another in order to permit
3 the navigation that Kewazinga says is the crux of this
4 invention, then, yes, absolutely it is proper to have that be
5 part of the construction.

6 There's one other point I want to make on this, and it
7 goes to this idea of whether the relationship has to be
8 predetermined. I think, as I was saying before, if that's not
9 the case, if any relationship can be determined after the fact
10 between cameras, then the phrase loses all meaning, right? The
11 order of arrangement doesn't -- you can always sort of find a
12 relationship after the fact between cameras. You've now lost
13 the thrust and the meaning and, frankly, deviated from the
14 ordinary meaning of what it means to be an array. You've got
15 to have a comparison point. There's got to be a regular order
16 arrangement. In fact, I think it was in one of the slides that
17 Mr. DiBernardo showed. I think it was slide 43. It had this
18 notion of if you had a car, I think in the example, go from
19 point A to point B to point C, that's, in their contention, one
20 array. And then on the bottom of the slide, point A, point B,
21 but then the car swerves, and they argue that's not an array
22 for the purposes of this hearing. I think what we're going to
23 see is they're going to argue that, OK, the car turned, but you
24 still know the distances between B and C, so that's also an
25 array. You haven't changed any geometric relationship between

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1 the cameras. You can make that argument for any collection of
2 cameras.

3 Does that make sense, your Honor? It can't be
4 something that's sort of after the fact. The whole point of
5 this patent was to come up with an arrangement of cameras
6 before the fact that could effectively allow a user to navigate
7 the environment.

8 THE COURT: Well, except that it talks -- I don't have
9 the exact words in front of me, but it's something about like
10 "along a line of travel" when they're talking about independent
11 users, and user one can go along this line of travel. So as
12 long as you're sticking to this path or this line of travel in
13 the environment and you're capturing images along the way,
14 along that path, why do you need to know in advance whether
15 your second image in your second camera is two feet or
16 three feet?

17 MR. MODI: Well, again, because if the entire point of
18 this invention, as the patents themselves say and as
19 Mr. DiBernardo articulated this morning, is to allow
20 navigation, in fact, seamless navigation in the environment,
21 it's not enough to just after the fact say, well, gosh, these
22 two images are a mile away from each other, as an example,
23 right? To actually do what the patents are trying to get at
24 here, there's got to be some determination before the fact of
25 what the order of the cameras is going to be. That's inherent

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1 in an array.

2 THE COURT: OK.

3 MR. MODI: I do want to -- let me talk a little bit
4 about Figure 11. I know this is a point of contention in the
5 papers.

6 Mr. Skrzypek, can we go to slide 37, please.

7 Your Honor, there is -- as I said at the outset, there
8 is not a single description or embodiment anywhere in these
9 patents about a single array that is created over time. It is
10 not what Figure 11 says. And on slide 37, I have indicated
11 what Google's evidence is on this figure and what Kewazinga's
12 evidence is. Google's evidence is, in addition to the
13 *Microsoft* Court finding this exact point, the intrinsic
14 evidence. It's the words of the patents and the claims
15 themselves. Kewazinga's is almost exclusively based on
16 Dr. Lubin's testimony. As your Honor pointed out, the whole
17 interpretation of that figure relies on this sub-array point
18 which simply doesn't exist in the patents. And then I will
19 come back to what Kewazinga has now argued, which is there's
20 this little arrow 10 in the corner that should be the whole
21 basis on which the Court finds that this depicts a single
22 array.

23 So with respect to what the *Microsoft* Court found --
24 next slide, please -- again, I want to emphasize this exact
25 argument was raised by Kewazinga to Judge Woods. The Court

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1 actually asked in the *Microsoft* case: "Can I ask, is there any
2 one example of moving cameras within an array as opposed to
3 moving an array?" And the response was: Sure, Figure 11. And
4 the description is the same one we've heard today. How does
5 that happen? By moving cameras. The ring is in the center
6 first, images are stored, then it's moved away, then it's moved
7 away. I actually think it might have been the same slide that
8 we saw this morning.

9 THE COURT: And I thought I saw somewhere around the
10 description of Figure 11 they talk about moving one of the
11 arrays away so that it doesn't impede the view of another
12 array.

13 MR. MODI: That's exactly right, your Honor. You have
14 an array, a cylinder array that you place at a certain distance
15 from the object. That array has cameras on it at fixed points.
16 You capture the images; you take it away. You bring in a new,
17 different array, not a sub-array, a different array, 12-1 or
18 12-2. That one has cameras around it, and you then take the
19 pictures from that separate array and then you remove it, and
20 you can do that a couple of times. But now what you've got is
21 a plurality of removable arrays and you can navigate between
22 the different arrays. What the patent does not say is this is
23 all one array. The patent --

24 THE COURT: What about that little 10 in the corner?

25 MR. MODI: OK. Let's talk about that 10.

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1 Mr. Skrzypek, can we go to slide 52, please.

2 So the entirety of the argument is a description of
3 Figure 11 which calls back to Figure 1 and this little initial
4 10. By the way, actually, I believe all the embodiments do
5 that. So this isn't like something that they were just making
6 sure to try to reference it. I believe that's actually just
7 sort of boilerplate language that is included in most if not at
8 all.

9 What does Figure 1 say? What does the spec say about
10 Figure 1 and what does it say about 10? What it actually says
11 is the array 10 employs a series of cameras, and so as a
12 result, the entire array does not need to be moved. So this is
13 talking about the opposite of moving an array; it's talking
14 about not moving an array. And I think what that shows is, as
15 Google argues, what 11 is showing is you've got, let's say, an
16 inner array that is situated in the environment, takes images,
17 comes out, right? Doesn't move out and expand or anything like
18 that. It comes out; you bring in a new array. And it's these
19 plurality of removable arrays that constitutes this embodiment
20 of multiple arrays. In other words, these aren't creating an
21 array over time. These are multiple arrays that are being used
22 one after the other. Again, that's just clear from the text of
23 how Figure 11 is described in the patents.

24 Mr. Skrzypek, if we could go to slide 42, please.

25 I mean, this is the clearest example, I think, of them

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1 all. Figure 11 shows up in the portion of the specification
2 called "Multiple Arrays." It would have been very easy -- this
3 is -- I actually think Mr. DiBernardo was the drafting attorney
4 on this patent. I mean, if they wanted to, they certainly
5 could have written the words along the lines of "Figure 11
6 describes a single array that is created over time." That's
7 not what the patent says at all. The patent says it's multiple
8 arrays. As will be understood by those skilled in the art, the
9 arrays, plural, described with reference to Figure 11 may be
10 used with any server or storage, etc. These are multiple
11 different arrays, not a single array that is created over time.
12 There isn't a single example of that anywhere in these patents.

13 With that, your Honor, I will reserve any -- I'll
14 reserve some time for any points that Kewazinga has in
15 rebuttal.

16 THE COURT: OK. Mr. DiBernardo, are we going to talk
17 about mosaicing, or are you going to do a rebuttal at this
18 point?

19 MR. DiBERNARDO: I will do a rebuttal on the array
20 point, your Honor.

21 THE COURT: OK.

22 MR. DiBERNARDO: OK. Let me start with the import of
23 that 10. The term at issue is "array of cameras," and array of
24 cameras is identified by 10. It's identified that way
25 throughout for consistency. And array of cameras 10, putting

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1 aside the use of the term "sub-array," it's clear from both
2 Figure 1 and Figure 11 that the array of cameras, the term at
3 issue, comprises multiple other arrays. In Figure 1, array of
4 cameras 10 comprises multiple rail arrays. In Figure 11, array
5 of cameras 10 comprises multiple rings, cylinders, 12-1 through
6 12-n.

7 For Google to say that there's absolutely no
8 disclosure of a single array created over time completely
9 mischaracterizes the teaching of Figure 11. The array 10 of
10 11, the collection of all of those cylinders, is created over
11 time with one cylinder being put in place and removed and the
12 next one being put in place and removed, and so on. That is
13 absolutely not the case that there is no disclosure of an array
14 created over time. Figure 11 is absolutely that.

15 Notably, that important Figure 11 and the label 10,
16 well, in the brief Google doesn't dispute the explanation of
17 how Figure 11 operates, and they seem to agree now that rings,
18 cylinders, are put into place and removed, images are captured,
19 and that all, the whole collection of imagery, is available to
20 be navigated. That whole collection of imagery from the
21 multiple cylinder arrays, that's array of cameras 10. Of
22 course, they don't provide any explanations for that label 10.

23 If I could jump ahead, they also -- apologies for the
24 scrolling, your Honor.

25 THE COURT: That's all right.

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1 MR. DiBERNARDO: Google says that we haven't --
2 basically, they say we said there doesn't have to be any
3 relationship among the images or the cameras. That's not the
4 case. The patents describe navigation based on a known
5 relationship and a relative relationship. For example, in an
6 array as shown, knowing that camera X1 is to the right of X0
7 and X2 is to the right of X1, X3 to the right of X2, and being
8 able to navigate based on user inputs from one camera image to
9 another image to another, the fixed in relationship goes to
10 that type of navigation. Again, that's also supported by
11 Figure 5 in all of the patents which show a user navigates
12 based on relative position. If the user wants to move to the
13 right, they don't need to know the precise location of the
14 camera, of the output. They simply indicate in terms of the
15 input.

16 This is the relationship that the *Microsoft* Court was
17 focused on in "fixed in relation." It was these known
18 relationships between the cameras. The fixed geometric
19 relationship is what created the path through which the array
20 of cameras can be defined. And, again, in the embodiment of
21 Figure 11 with -- once all of the images are captured from
22 those moving arrays, the relationship of the images within the
23 array, the collection of all of the captured imagery, all of
24 the cylinders, the relationship does not change. Navigation
25 happens as described, by sequencing through the captured

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1 images. Again, we have not said there doesn't have to be any
2 relationship in the context of the patents. It just doesn't
3 have to be predefined. And as pointed out earlier, some of the
4 claims do include other language. It's not part of the array
5 limitation, it's other language in the claim, for example, that
6 recite progressively different perspectives of the environment.
7 Cameras, the images, can have relative relationship among them,
8 and that permits navigation as described in the patents,
9 including at Figure 5.

10 One other point, your Honor. I went through the
11 specific language in the *Microsoft* Court's opinion explaining
12 why this issue was not being addressed by Judge Woods.
13 There -- and perhaps take a step back. There, Microsoft's
14 proposed construction was a set of multiple cameras each fixed
15 to capture images at a different location to provide a view
16 through the environment, and it goes on. But the important
17 point is there the issue was not does there need to be a known
18 relationship between cameras? There, Microsoft is arguing each
19 had to be fixed to capture images at a different location. In
20 other words, each camera had to be stationary, and so the
21 quotes that Google has showed you regarding the fixed issue is
22 a different issue. The issue was do the cameras have to be
23 stationary? Judge Woods, as I went through, did not address
24 the issue of whether or not the array of cameras 10 in Figure
25 11 was the collection of all the imagery collected by the

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1 multiple cylindrical arrays. That absolutely was not before
2 him. He did not address that in the rationale that we went
3 through earlier, your Honor.

4 I guess just one other point since it was raised.
5 They made a point that Figure 11 was not in the '226. The '226
6 patent and the '325 patent are related. They are in the same
7 family. The '325 claims priority to the '226 patent. The case
8 that Google cites, the *Goldenberg* case, is completely
9 different, and in fact emphatic makes the point that Kewazinga
10 makes. When two patents like the '226 and '325 are formally
11 related, are in the same family, you can use one to interpret
12 terms in the patents. That's the *Contech* case that we cite.
13 The later continuation in part, which is the case we have here
14 for the '325, was used to construe terms in the earlier parent
15 application. In fact, the *Goldenberg* case that Google cites
16 emphatically makes the point that we made. It says the law
17 makes distinct line between patents that have a familial
18 relationship where you can use continuations in later patents,
19 such as the '226 and '325 Kewazinga patents, and those that do
20 not. That's exactly the point.

21 Furthermore, in the *Goldenberg* case, the patentees
22 argued that the two patents at issue, unrelated patents, cover
23 different inventions. Here, that's not the case. The '325
24 patent is based on and incorporates by reference the '226
25 patent, and the Figure 11 discussion is based on Figure 1. It

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1 carries forward this notion that the array of cameras 10 can
2 comprise multiple smaller arrays and builds on the discussion
3 in the '226 patent that cameras can be secured to movable
4 frames and cameras can indeed move.

5 With that, your Honor, I'll reserve my time for the
6 next issue, unless you have any questions.

7 THE COURT: I don't at this point. Thank you.

8 MR. MODI: Your Honor, may I respond briefly?

9 THE COURT: Yes. Yes, of course.

10 MR. MODI: Thank you.

11 Just a couple of points based on the points that
12 Kewazinga's counsel raised. From the papers and now in this
13 argument, it is clear that Kewazinga recognizes that, at a
14 minimum, for the array of cameras limitation, there must be
15 some known relationship between the cameras. What Kewazinga is
16 arguing, though, is that that relationship can be determined
17 after image capture. And that is the point that, if you just
18 think about it, makes no sense; in fact, completely eliminates
19 any requirement from this claim whatsoever. You can always
20 determine a relationship between any two things after the fact,
21 right? It's before the fact that is critical here. So it is
22 not a concession at all -- I mean, it is not an argument at all
23 to say: Yeah, there can be a known relationship, but, you
24 know, it doesn't have to be. It can be after the fact. That's
25 not imposing any limitation on the claim term whatsoever.

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1 That's not what the patents contemplate.

2 Secondly, with respect to this idea that whether the
3 collection of cameras in Figure 11 constitutes a single array,
4 the argument was that that specific issue was not raised before
5 Judge Woods. I just want to make this very clear. It was
6 absolutely, positively raised and rejected.

7 Mr. Skrzypek, if we can pull up slide 39, please.

8 The Court in *Microsoft* asks the direct question: "In
9 each of the cylinders described here, as identified with a
10 separate designator, 12-1 through 12-n, does that say anything
11 about whether or not each of these rings constitutes a separate
12 array of cameras as opposed to the collection constituting an
13 array of cameras?" And the response was: "The collection
14 12" -- I think 10 was intended there -- "the collection can
15 mean the array."

16 It's the exact same argument, and so the only twist
17 that I've heard today is reference to the collection of images
18 being the array, the single array. But as your Honor noted,
19 we're talking about a collection of cameras. We're not talking
20 about images. So this precise argument was raised, including
21 with respect to the little numeral. And if we look at
22 slide 41, I know your Honor is already familiar with Judge
23 Woods' opinion, but the *Microsoft* Court specifically rejected
24 this argument.

25 Unless your Honor has any questions, I'll reserve

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1 further time for the next term.

2 THE COURT: Thank you. Shall we move to the second
3 issue?

4 MR. DiBERNARDO: Thank you, your Honor.

5 Just one point on that. Counsel quoted from the oral
6 argument that one question out of context regarding the
7 collection, and of course that did not, as we saw, did not make
8 it into the *Microsoft* opinion. It was not addressed by the
9 Court, certainly not discussed in the opinion and the language
10 that we saw in the opinion.

11 With that, I will go to the term "mosaic." One moment
12 while I scroll ahead. Thank you, your Honor. OK.

13 THE COURT: Can I ask a question about mosaicing. It
14 looked to me, just by looking at the two constructions, like
15 there were perhaps two issues: One was the issue of
16 seamlessness, and the other issue was whether the camera has to
17 be the only source of the images that are being fitted
18 together. But I wasn't entirely clear that those were the two
19 issues and that there were just two.

20 MR. DiBERNARDO: I think that's fair, your Honor, and
21 this slide highlights the issues. Essentially, the base of
22 each of the proposed constructions that mosaicing be assembled
23 and include an alignment process and a composition process
24 there's agreement on, and that is consistent with the *Microsoft*
25 Court's ruling. Google adds two limitations that are not part

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1 of the ordinary and understood meaning of the term "mosaicing"
2 and that are actually contradicted by the intrinsic evidence,
3 and that is requiring that it be of camera outputs, as we've
4 highlighted, and this almost statement of purpose that they
5 add, "to achieve a seamless combination of the camera outputs."

6 Specifically to your point of whether or not it needs
7 to be seamless, there's no disagreement that the ordinary
8 meaning and understanding of a mosaic is that it need not be
9 seamless, and they actually can't have seams. That's
10 consistent with Judge Woods' rationale and holding in *Microsoft*
11 and the intrinsic evidence here. We'll get into that in a
12 little more detail.

13 So here again there's no dispute that the ordinary
14 meaning of mosaicing is not limited to camera outputs. Google
15 tries to read in that it's limited to camera outputs. It's
16 not. The intrinsic evidence explicitly describes mosaicing,
17 what's referred to as additional source outputs, and those are
18 not camera outputs. In the '325 patent -- and Google makes an
19 argument that additional source output is not disclosed there,
20 but it absolutely is, including in claims 2 and 3 -- mosaicing,
21 the camera output and the additional source output, and that
22 can include computer graphic imagery, virtual world imagery,
23 and other images. It's not limited to camera outputs.
24 Mosaicing in the context of these patents is not limited to
25 mosaicing camera outputs.

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1 The same with the '234 patent. Again, Google argues
2 that the '234 should be disregarded, but, again, it does
3 address this issue. It says: Additional source output, alone
4 or in combination with camera output, for example, can be
5 represented by mosaicing, mixing, layering, etc. Mosaicing in
6 the patents includes mosaicing not just camera outputs but
7 other imagery.

8 Some claims do recite mosaicing outputs of cameras.
9 And according to the *Phillips* case, to require that in the
10 definition of mosaicing is improper. It renders that claim
11 language redundant. Where the claim says mosaic output of
12 cameras, that's what's been mosaiced, but where it's silent,
13 that's not required by the term "mosaicing."

14 Now, on this issue of seamlessness, again, there's no
15 dispute that the ordinary meaning of mosaicing does not require
16 additional processing to make the mosaic seamless. The mosaic
17 can have seams. It exists whether a mosaic is seamless or not
18 and whether or not attempts are made to make the mosaic
19 seamless. Dr. Lubin explained this and Google offered no
20 counter-testimony, and the intrinsic evidence directly supports
21 this. The Burt patent, which is incorporated by reference into
22 the '325 and '234 patents, says: After processing, the
23 individual images are combined to form a mosaic. The mosaic is
24 formed. Additional image processing is performed on the mosaic
25 to ensure that the seams between the images are invisible.

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1 Removing seams is after a mosaic is formed. It is not required
2 by mosaic, and the *Microsoft* Court, quoting that language,
3 found just that. The Burt patent makes clear that a mosaic can
4 be formed even if that mosaic is not perfectly seamless.

5 Now, with that ordinary meaning, the patents do not
6 disavow the full scope. Here, Google really conflates two
7 issues. They say, well, the patent describes smooth motion,
8 seamless navigation. That does not require mosaics to be
9 seamless. The asserted patents criticized prior art where
10 changing the camera views resulted in a discontinuous image,
11 basically jumping from one image to another image, a jarring
12 view even as Google characterizes it. That was what was
13 criticized. That overall navigation of avoiding that
14 discontinuous image does not require mosaics to be seamless. It
15 has nothing specifically to do with mosaicing. One way we know
16 is that that same language, "avoiding the discontinuous and
17 jarring image," is in the '226 patent, and the '226 patent
18 makes no mention of mosaicing. It's talking about overall
19 smooth navigation, and Google conflates these two issues, on
20 the one hand, trying to smooth navigation, and on the other
21 hand, requiring a mosaic to be seamless.

22 Seamless navigation in the patents is about providing
23 users with smooth transition during navigation, not whether a
24 mosaic may have a seam in it. And perhaps to put this in
25 better context for your Honor, what does it mean for a mosaic

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1 to have a seam? A seam could be, for example, different
2 exposures for images. One image has bright exposure. Another
3 image being mosaiced may be taken with clouds, so it's darker.
4 Those images can be aligned in the composition process to form
5 a mosaic, but there may be some differences in the exposure
6 where a seam could be visible to a user. That doesn't go to
7 whether or not there's smooth navigation. There is still
8 smooth navigation, namely, no jumping or jarring effect from
9 discontinuous images despite that theme being present.

10 Google's conflating --

11 THE COURT: I'm just going to stop you for a second.
12 Mr. Street tells me you have seven minutes. I'm not sure
13 whether that's the same time you had, but I wanted to let you
14 know.

15 MR. DiBERNARDO: Thank you, your Honor.

16 Here I should -- so, your Honor, Google asserts that
17 Kewazinga's proposed construction would lead to a nonsensical
18 result because it would permit anything to be a mosaic. And in
19 support Google contends that Dr. Lubin testified that images
20 can be mosaiced even if they have no relationship. That is
21 absolutely a mischaracterization of Dr. Lubin's testimony. He
22 never said it didn't have to be any relationship between images
23 between mosaiced.

24 First, it's not a nonsensical result because even the
25 agreed portions of the construction require there to be an

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1 alignment process and a composition process. Moreover, other
2 claim language, as we talked earlier about, requires that there
3 be progressively different perspectives of the environment.
4 Again, describing the images that are being mosaiced or that
5 may be mosaiced. And then in terms of Dr. Lubin's explanation,
6 it's clear he says there is no requirement that there be any
7 particular relationship. As long as you have a known
8 relationship between those views, the views can be mosaiced.
9 So there has to be a relationship, there has to be an alignment
10 process, and a composition process. There's no nonsensical
11 result.

12 Just, your Honor, I guess to take a step back
13 regarding Google's attempt to add in this notion of to achieve
14 seamless combination, it really seems that this is absolutely
15 unhelpful to a jury. It raises issues of intent and whether or
16 not the creator of the system was intending to achieve a
17 seamless combination. It also raises issues that are
18 inconsistent with the accepted ordinary meaning that a mosaic
19 does not have to be seamless. There is an alignment process
20 and a composition process. That's when a mosaic is formed.
21 That's the basis on which infringement should be found. That a
22 mosaic may have seams, like differences in exposure, does
23 not -- it still fulfills the purpose of the invention of
24 smoothing navigation. Requiring a seamless mosaic has nothing
25 to do with smooth navigation.

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1 Highlighting the ambiguity of this term and this
2 phrase that they seek to add, at page 22 of Google's brief,
3 they mention that the best process for achieving a mosaic
4 should be employed. Does that mean that to achieve a seamless
5 combination, the best process has to be employed? That could
6 differ with different applications. The patents talk about
7 different techniques for doing a mosaic: merging, fusing,
8 filtering. Does that mean one of those processes could be
9 enough, as is thought and understood in the art, or this notion
10 of using a best process, do all of those have to be used? This
11 phrase is really unhelpful to a jury, it's ambiguous, and it
12 brings in this notion of intent. It also begs the question of
13 whether or not the additional processing that Judge Woods
14 focused on, whether that, which is agreed not part of
15 mosaicing, whether such additional processing is now somehow
16 required to achieve this best process for obtaining a mosaic.

17 With that, your Honor, I'll save any remaining time.

18 THE COURT: OK.

19 MR. MODI: Mr. Skrzypek, can we go to slide 55 of the
20 Google presentation, please.

21 Your Honor, there's really one principal dispute here,
22 which is the last phrase "to achieve a seamless combination of
23 the camera outputs," and the second one sort of flows from the
24 first. So I'll take it in that order, and I'll show you what I
25 mean. But what we're trying to do here with this construction

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1 is provide some additional clarity on what a composition
2 process is. A composition process doesn't really have a clear
3 meaning or any meaning, and we respectfully submit that
4 additional clarity about what that process is will actually be
5 helpful to the jury and enable the jury to perform its duty of
6 deciding whether there is infringement or not infringement.

7 Where does the language come from? The language is a
8 direct -- it comes directly from the specification and
9 specifically the patent that Kewazinga incorporated by
10 reference for this concept of mosaicing. And I'll go through
11 that in a second, too. But for context, one additional point I
12 want to make here is a lot of the presentation that Kewazinga
13 just delivered was focused on the noun "mosaic" and whether the
14 noun "mosaic" had to be perfectly seamless. That's not the
15 issue here. The issue here is the verb "mosaicing." This
16 verb, this action, is something that's recited in a number of
17 the claims. And in the *Microsoft* opinion, the Court actually
18 had a very apt analogy to the concept of proofreading. The act
19 of proofreading is looking through something and trying to pick
20 out and correct any typos, for example, in a brief. Now, is
21 something that has been proofread fully perfect and absent of
22 typos? Well, hopefully. That would be a good proofreading
23 process, but that doesn't always happen. I've certainly
24 written briefs that I thought I've proofread and later found a
25 typo or two, but the verb, the act of proofreading, requires

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1 some effort to remove errors, and it's sort of a similar thing
2 here. The act of mosaicing, as described in these patents,
3 includes, requires, some effort to achieve a seamless
4 combination of the outputs.

5 Next slide, please.

6 And just building on the point of why this is going to
7 be helpful, the *Microsoft* Court actually left open the
8 possibility of construing or deciding this very issue. What
9 the *Microsoft* Court concluded was if there was a dispute about
10 whether there needs to be some image processing aimed at
11 reducing seams in mosaiced images, in other words, mosaicing,
12 the Court will consider supplemental briefing as to the meaning
13 of the term "composition process." So all Google's proposal is
14 is an additional clarification on composition process.

15 Now, where does this construction come from?

16 Slide 58, please.

17 The '325 patent describes mosaicing, the term at issue
18 here, by incorporating by reference the '032 patent to Peter
19 Burt. The mosaicing is something that comes from the Burt
20 patent.

21 Next slide, please.

22 What the Burt patent describes, as shown on slide 59,
23 is that mosaicing is a two-part process, the second part having
24 a couple of subparts. So there is an alignment process that's
25 indicated in blue with 300 and a composition process, 303.

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1 This the parties are in agreement on. There is an alignment
2 process there's a composition process. That was the *Microsoft*
3 Court's construction, and there's no dispute there. But what
4 does the Burt patent say about what the composition process is?

5 Next slide, please.

6 So according to the Burt patent, once that top
7 alignment process is complete, the invention utilizes a mosaic
8 composition process to construct or update a mosaic. That
9 composition process within itself contains two processes: a
10 selection process and a combination process. Now --

11 THE COURT: Can I just ask, what's an alignment
12 process?

13 MR. MODI: An alignment process is aligning two of the
14 constituent inputs with one another. And I think the patents
15 describe it, and I don't actually have the precise description
16 either in my slides or on the top of my head, but I think it is
17 largely in line with what an ordinary meaning of alignment is
18 to mean, to try to line up certain things in a certain way.

19 THE COURT: Then how is that different from the
20 mosaicing composition process?

21 MR. MODI: Well, the mosaic composition process is --
22 the alignment process is part of the mosaic composition
23 process. So mosaic composition process, or mosaicing, includes
24 both alignment and then this composition process. I'm sorry.
25 I think I misunderstood your question.

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1 Composition is something different than alignment, and
2 actually this is -- your Honor's question is exactly right.
3 Why is that different? How is that different? What even is a
4 composition process? That's exactly why additional
5 clarification around that makes sense. What the composition
6 process is, according to the Burt patent, is a selection and a
7 combination. The selection process -- this is on slide 60 --
8 automatically selects images for incorporation into the mosaic
9 and may include masking and cropping functions. OK. So
10 there's some selection of whatever the inputs are into this
11 composition process.

12 Then there is a separate combination process. The
13 combination process applies various imaging processing
14 techniques, such as merging, fusing, filtering, image
15 enhancement, and the like, to achieve a seamless combination of
16 the images. That is the point and the results of the
17 combination process, to achieve a seamless combination of the
18 images. Does it have to be done in any particular way? No.
19 As the patent says, it can be merging, fusing, filtering, and
20 we are not proposing in the construction that it has to be done
21 in any one of those ways. But what is clear from the Burt
22 patent is that the combination process achieves a seamless
23 combination of the images. That's what it is, and it would be
24 helpful for the jury to understand that's what it is. Without
25 that context, it's really unclear how a jury is supposed to

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1 evaluate whether or not the combination process has been met or
2 not. The combination process could mean anything. The patents
3 tell us what it means.

4 Next slide, please.

5 Then now coming back to the Kewazinga patents,
6 the '325 patent includes exactly this same disclosure. The
7 combination process applies these different techniques, or one
8 of these different techniques, to achieve a seamless
9 combination of the outputs. So the patent tells us what it
10 does, and it is that description, and just that description,
11 which will be helpful for a jury and we believe should
12 therefore be in the construction.

13 Then with respect to the sort of secondary point, your
14 Honor -- I'm sorry, Mr. Skrzypek, can we go to slide 64,
15 please.

16 There is the argument in the papers and Kewazinga's
17 presentation just now that what the Burt patent says is that
18 any attempts to achieve seamlessness is some separate step from
19 the mosaicing. That's the argument that's be presented. The
20 problem is the portion of the Burt patent specification that
21 Kewazinga relies on is talking about the prior art. That's
22 talking about how mosaicing was done before the Burt patent.
23 What the Burt patent describes and what is incorporated into
24 the Kewazinga patents is a mosaicing that involves this
25 combination process to achieve a seamless output of the images.

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1 Then slide 65, Mr. Skrzypek.

2 Because we believe it would be helpful to the jury and
3 clearer to articulate what is meant by the composition process,
4 we would propose adding that last portion of the construction
5 in. And as a grammatical matter, this is why we had proposed
6 that the second line in Google's construction there on slide 65
7 include camera outputs because what's clear is what's being
8 combined, as described in the Burt patents, is the camera
9 outputs. And if you just think grammatically about how this
10 construction works, it would be confusing to have images in the
11 first part and then a combination of the camera outputs in the
12 second.

13 So that's the basis of that change. It flows from the
14 much more principal dispute, which is what is a composition
15 process, and it is consistent with how the claims are recited.
16 We have on the bottom of slide 65 this claim 1 of the '325
17 patent which makes clear that what is -- the sequentially
18 mosaicing is performed on the selected outputs of cameras. So,
19 yes, it's in the claim. I agree with that. It is really more
20 of an ensuring grammatic consistency within the construction
21 type of issue.

22 Unless your Honor has any questions, I will reserve
23 the remainder of my time for any rebuttal.

24 THE COURT: OK. Mr. Street, how much time does the
25 plaintiff have left, if any?

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1 THE DEPUTY CLERK: Kewazinga has two minutes left.

2 THE COURT: OK.

3 MR. DiBERNARDO: Thank you, your Honor.

4 Real quickly, then, to say that this added language
5 "to achieve seamless combination" is to explain the composition
6 process is disingenuous. If that were the case, there would
7 be experts explaining what that meant. A composition is to
8 form a single image with at least part of the two images. It's
9 that process that helps smooth navigation. That's the process
10 that's understood by the alignment and composition process.

11 Mosaicing, your Honor, predated the Burt patent. What
12 Google is trying to do is to limit mosaicing to just what's a
13 preferred embodiment in Burt, and that is not the case. That
14 is not the ordinary meaning. That is not the process of claim
15 construction. There is no basis to limit mosaicing to a
16 preferred embodiment in Burt, which is also just one embodiment
17 in the Kewazinga patent. The description in Burt is an example
18 of an example. It's not limited to the mosaicing in the Burt
19 patent. It's just one example.

20 Taking a step back, it seems by focusing on this
21 combination process, Google is in essence going back to what
22 the *Microsoft* Court rejected. They're saying that the
23 combination process has to achieve a seamless image. That was
24 rejected by the *Microsoft* Court. That is not part of the
25 understood meaning of what a mosaic is. A mosaic can have

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1 seams. The intrinsic evidence says that, and *Microsoft*
2 rejected that very argument by Microsoft. They've come full
3 circle, and this extra language, "to achieve seamless
4 combination," should be rejected as inconsistent with that
5 ordinary meaning, your Honor.

6 THE COURT: OK. Give me just a minute.

7 MR. MODI: I'm sorry, your Honor. May I add?

8 THE COURT: Yes. Mr. Modi, I guess I'm still not --
9 you said it was just a matter of grammar, but it still sounds
10 like in your proposed construction you're including only camera
11 outputs and you're not including other sources of imagery, and
12 in fact you seem to be excluding it. Is that the case, and if
13 so, why should we do that?

14 MR. MODI: That's not the intent, your Honor, and if
15 it's more palatable to the Court, we could keep that plurality
16 of images portion of the *Microsoft* construction intact. It is
17 Google's position that additional clarification on what the
18 composition process entails or even means, for that matter, is
19 important, and so we would respectfully suggest that that be
20 incorporated into the construction because that's exactly how
21 the patents describe what that is. And to the extent it
22 creates any sort of grammatical inconsistency within the
23 construction, I'm sure, to the extent there's a dispute about
24 that later in the case, maybe that could be resolved at that
25 time.

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1 THE COURT: OK. I didn't mean to interrupt you. Was
2 there anything else you wanted to address?

3 MR. MODI: Oh. So, no, I appreciate that, your Honor.
4 Thank you.

5 Again, we're not talking about mosaic. The *Microsoft*
6 opinion had a very long description of the notion that a mosaic
7 does not need to be perfectly seamless because it's not
8 something you can sort of determine before the fact or after
9 the fact. We're talking about the verb, and the verb is
10 defined in the Burt patent. The notion that Kewazinga was just
11 merely -- first of all, the notion that there's an ordinary
12 meaning to mosaicing I would dispute. It's not certainly a
13 phrase that I don't think is used in any regularity in these
14 patents. In fact, Kewazinga had to go to another patent to
15 really describe what the concept is. And what that patent says
16 is, OK, there's mosaicing as was done in the prior art, but
17 here's what mosaicing means here. So I think the disclosure
18 that is actually in these patents is the mosaicing that is
19 described in the Burt patent. It has that flowchart. The
20 parties don't dispute that, and it's really just about what do
21 we do with this composition process?

22 Unless your Honor has any questions on mosaicing, I
23 just didn't want -- your Honor had asked for a couple of cases
24 on whether it's appropriate to construe a claim when the
25 specification consistently describes the invention in a certain

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1 way. There are a couple of cases. One is *Medicines*
2 *Co. v. Mylan*, 853 F.3d 1296. Another is *Scimed v. Advanced*
3 *Cardiovascular*, 242 F.3d 1337. And of course, *Phillips* and
4 then the number of cases that we cited in our papers as well
5 stand for this position that you don't look at claims in a
6 vacuum. The *Eon* case is another. This is meant to be an
7 exercise in trying to figure out what the inventors actually
8 invented.

9 So unless your Honor has any further questions, that's
10 all I have.

11 THE COURT: OK. Thank you very much.

12 Thank you to both of you, and you're sending copies of
13 your PowerPoints to the chambers email address, right, both?

14 MR. DiBERNARDO: Yes, your Honor.

15 MR. MODI: Yes, your Honor.

16 THE COURT: That would be much appreciated. Thanks.

17 OK. Unless there's anything else, is there anything
18 else we need to discuss? Sounds like no. We are --

19 MR. DiBERNARDO: One quick question, your Honor.

20 THE COURT: Yes.

21 MR. DiBERNARDO: Just housekeeping. Do you have a
22 preferred form for the slides? In native PowerPoint or just a
23 PDF? Both?

24 THE COURT: Why not both, because sometimes it's
25 faster to read or faster to send if it's in one form versus

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1 another.

2 MR. DiBERNARDO: Will do.

3 THE COURT: Thank you.

4 Thanks very much. We're adjourned.

5 MR. MODI: Thank you, your Honor.

6 MR. DiBERNARDO: Thank you.

7 (Adjourned)